

REMARKS / ARGUMENTS

Claim 34 has been amended to correct the error noted in the Notice of Noncompliant Amendment of September 14, 2009 by showing the deletion, inadvertently not shown in the prior amendment. Although the Notice of Noncompliant Amendment stated that the error was in Claim 20, a subsequent telephone conversation with the examiner confirmed that the error was in Claim 34, which was dependent upon Claim 20. Applicant's attorney wishes to thank the examiner for her help. This error was without any deceptive intent by the undersigned attorney and was made in an attempt to adopt a suggestion made by the examiner. The accompanying Request for Extension of Time is merely a restatement of the Request filed with the Amendment of June 3, 2009, and has been included in an effort to avoid potential confusion. No other Request for Extension of Time is intended. No other changes have been made to the amendment filed on June 3, 2009.

The Bernard '983 reference, as interpreted in support of the pending rejection, can be characterized in two ways, is susceptible to two interpretations. It is unclear to the undersigned, which interpretation is intended, and both will be considered.

The first interpretation would require that the bottom sheet 16a be stitched to the outer or retaining supporting garment 15a in order to correspond to the rejected claims. Although the Bernard '983 reference is admittedly somewhat confusing to the undersigned, it would appear that this first interpretation is inconsistent with the explicit language of that reference. As stated therein, "the ends of the retainer element and the bottom sheet 16a are provided with fastener elements 52 which cooperate with fastener elements 51". Col. 3, lines 38-42. It would follow then that since the retainer element is detachable, then the bottom sheet 16a would also be detachable since it has the same fastener elements 52 that are on the retainer element, and fastener elements 52 engage fastener elements 51 which are on the ends and sides of the outer garment. If the bottom sheet 16a includes fasteners detachable from the outer garment, then it would appear inconsistent for bottom sheet 16a to be stitched to the outer garment 15a. Therefore bottom sheet 16a could not be the claimed anchor layer and a rejection based on this interpretation would be improper.

Admittedly the rejection does state that the element 15a of Bernard '983 has an outer layer of 15a and an inner layer 15a, which would then correspond to claimed outer layer and anchor layer respectively. Pursuant to this second interpretation of the rejection, the inner layer 15a is assumed to be the middle (unnumbered) layer of the cross section blowup taken from Figure 9 of Bernard '983 and not bottom sheet 16a. However, if this is correct, it must then follow that the fastener element 51 extends through both the outer layer 15a and this middle layer of element 15a if fastener elements 51 are to be exposed so that the fasteners 52 can engage and disengage from fasteners 51. Therefore, the sling must be directly connected to the outer layer 15a, since it appears that fastener 51 extends through both layers 15a to engage fasteners 52. Thus the statement that the pocketed sling part is detachably coupled to the anchor layer but not to the outer layer is inconsistent with the most logical interpretation of the Bernard '983 reference. Therefore this second interpretation is incompatible with the rejected claims

It is also noted that a logical interpretation of these details of the Bernard '983 reference is even more problematic because the configuration of fasteners 51 and 52 on the left of Figure 9 (as blown up in Appendix A) is different from the configuration of fasteners 51 and 52 on the right of Figure 9. It is submitted therefore that any interpretation of the nature of these fasteners is speculative at best, and would be insufficient to support a rejection under 35 USC 103.

In rejecting the claims under 35 USC 103 it is asserted that Wyant '065 and Siudzinski '649 suggest that filamentary fasteners are interchangeable with the snap fasteners of Bernard '983. This assertion is not contested, but the rejection is understood to further state that filamentary fasteners on the anchor layer are necessarily and inevitable completely overlaid by the outer layer. The snap fasteners of Bernard '983 are exposed and assuming that filamentary fasteners could be substituted for snap fasteners does not mean that the filamentary fasteners will not be exposed. The stitches joining a filamentary fastener would correspond to the exposed studs on snap fasteners, and it is neither necessary nor inevitable that these stitches, forming part of the filamentary fastener, would be completely covered. The simplest approach would be for the stitches to extend through the outer layer of Bernard '983 if filamentary fasteners were substituted. Furthermore, the sides of filamentary fasteners would still be exposed if

located along the edges of the outer layer in the position corresponding to that of the Bernard '983 snap fasteners 51 or 52.

The statement made with respect to Claim 22 that cooperating snap fasteners are completely overlaid by an outer layer as taught by Siudzinski '649, Thompson '124, and Stevens '598 is believed to be an incorrect characterization of these references and therefore would not support the suggested modifications of Bernard '983.

Reliance upon Siudzinski '649 with respect to Claim 22 to teach that snap fasteners could be completely covered by a fabric outer layer shaped to conform to a buttock and leg region of the user is not understood. No part of the extension panel of Siudzinski '649 conforms to the shape of a buttock and leg region. Siudzinski '649 appears to disclose male and female snap fasteners attached to separate arcuate segments 75 of sheets 70a and 70b of an extension panel from which a diaper extends. There is nothing to show that either of these separate sheets 70a and 70b are each formed of two layers nor does there appear to be any suggestion that the sheets 70a and 70b are stitched around the male and female fasteners 76 and 78. Even if the arcuate segments 75 each have two layers, the phantom or dotted lines shown in Figure 6 are consistent with showing the snaps attached to the either layer. If the snaps were attached to inner layers of Siudzinski '649, a subsequent modification of Bernard '983 could necessitate an undesirable enlargement of Bernard '983's outer layer 15a relative to the diaper, which could alter the fit of the bid and suspenders relative to the wearer's waist.

The female snap fasteners of Thompson '124 '124 are secured to the outer layer and are thus not relevant to the rejected claims. Col. 2, lines 6, 7.

Figures 19A-19C of Stevens '598 '598 show a configuration in which fenestrations or openings are located on the outer cover 12 so that snap fasteners are located only on the disposable absorbent pad. Its relevance to the claimed invention or to a modification of Bernard '983 is not understood and is believed to be misplaced.

The secondary references also do not appear relevant to the claimed invention for reasons other than as stated in the rejection.

Siudzinski '649 does appear to disclose snap fasteners between two layers forming an extender panel, but there is no relationship to the use of such fasteners on an anchor layer that overlaps the diaper, and no sling is disclosed.

The absorbent pad 51 of Wyant '065 is detachably mounted to the diaper, but there is no pocketed sling or pocket for the absorbent pad. The pad is attached directly to the inner layer of the diaper.

Stevens '598 appear to teach neither a combination of an outer and anchor layer, nor a sling in which the absorbent pad can be positioned, and in combination with Bernard '983 and/or the other references would not teach the instant invention.

Alsop '604 discloses two embodiments, one of which includes a detachable pocket member, but this pocket member replaces a waterproof layer in the other embodiment. Alsop '604 is thus internally inconsistent with the claimed invention.

Brownlee '422 may disclose a pocket, but it does not disclose a detachable sling.

Claim 20 has been amended to recite that the releasable fasteners on the anchor layer are displaced inwardly from the stitches joining the anchor layer to the outer layer around the entire periphery of the anchor layer and all of the releasable fasteners on the anchor layer and the pocketed sling are displaced inwardly relative to the stitches joining the anchor layer to the outer layer when the pocketed sling is fastened to the anchor layer.

In support of the rejection Claim 20, it was stated, "It is noted that the entire periphery/all portions of the four sides of the sling is/are not required to be so inwardly displaced from the entire periphery of the anchor layer." As amended, claim 20 now states that the releasable fasteners are inwardly spaced from the stitches and the periphery of the anchor layer. Figure 7 of Bernard '983 shows that the fastener elements 51 are immediately adjacent a dotted line, which may represent stitching. This dotted line is tangent to the fastener elements 51. The relationship of any stitching to the fastener elements 51 does not appear to be apparent from Figure 9 of Bernard '983. The fastener elements 52 are located adjacent to the peripheral edges of the diaper as shown in Figure 8. A logical interpretation is that the subassembly 53 should be as large as possible with reference to outer supporting garment 15a and the bottom sheet 16a.

As claimed, the sling is detachable from the anchor layer, but is not attachable to the outer layer. The spacing of all fasteners from the outer layer and from stitches leading to the outer layer will isolate the fasteners from the stitches and from any leak path through the outer and anchor layer. This spacing is incompatible with the Bernard '983 configuration and it is not suggested by any of the secondary references. For

example, it is not clear that Siudzinski '649 even has layers corresponding to anchor and outer layers, nor is there stitching adjacent to the fasteners.

The characterization of Claim 34 as a product by process claim is believed to be incorrect, but such characterization is not believed to be particularly relevant to the allowability of this claim. It is submitted the Claim 34 is allowable for the reasons set forth with respect to other claims.

Claim 34 has been amended to conform to the language implicitly suggested by the examiner in order to overcome the rejection under 35 USC 112.

Applicant believes that an interview would be helpful in expediting consideration of this application and a formal request for an interview accompanies this response. A telephone interview would be helpful in addressing any possible differences concerning interpretation of the Bernard reference, and applicant is willing to make minor revisions to the claims that might be suggested by the examiner. However, a personal interview between the examiner and the applicant may be useful to the examiner, and the applicant is prepared to demonstrate the practical significance of certain problems addressed by the instant application to facilitate the wearer's comfort and to make these diapers easier to handle. The applicant is willing to travel to the Office at the examiner's convenience.

This amendment is believed to place this application in condition for allowance. Entry of this Amendment is therefore believed to be appropriate. Issuance of a Notice of Allowance is also believed to be appropriate and such action is courteously solicited.

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REQUEST FOR EXTENSION OF TIME

In the Amendment of June 3, 2009, Applicant requested a one month extension of time to respond to the office action of February 3, 2009. The appropriate fee was attached to the earlier amendment. (See Remarks in Accompanying Substitute Amendment.)

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